

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. OSH 2004-8
	)	
DIRECTOR, DEPARTMENT OF LABOR	)	ORDER NO. 111
AND INDUSTRIAL RELATIONS,	)	
	)	PRETRIAL ORDER
Complainant,	)	
	)	
vs.	)	
	)	
RESEARCH CORPORATION OF THE	)	
UNIVERSITY OF HAWAII,	)	
	)	
Respondent.	)	

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PRETRIAL ORDER

Pursuant to the representations by counsel for the respective parties at an initial conference held by the Hawaii Labor Relations Board (Board) on August 31, 2004, IT IS HEREBY ORDERED THAT:

1. The issues to be determined are:
  - a. Citation 1, Item 1a - 29 CFR 1910.134(c)(1)
    - (i) Whether Respondent violated 29 CFR 1910.134(c)(1) as described in Citation 1, Item 1, issued on June 25, 2004?
    - (ii) Whether the characterization of the violation as "Serious" is appropriate? If not, what is the appropriate characterization?
    - (iii) Whether the imposition and amount of the \$2,250.00 penalty is appropriate? If not, what is the appropriate penalty?
  - b. Citation 1, Item 1b - 29 CFR 1910.134(f)(2)
    - (i) Whether Respondent violated 29 CFR 1910.134(f)(2) as described in Citation 1, Item 1b, issued on June 25, 2004?
    - (ii) Whether the characterization of the violation as "Serious" is appropriate? If not, what is the appropriate characterization?

- c. Citation 1, Item 1c - 29 CFR 1910.134(k)(1)
- (i) Whether Respondent violated 29 CFR 1910.134(k)(1) as described in Citation 1, Item 1c, issued on June 25, 2004?
  - (ii) Whether the characterization of the violation as “Serious” is appropriate? If not, what is the appropriate characterization?
- d. Citation 1, Item 1d - 29 CFR 1910.134(e)(1)
- (i) Whether Respondent violated 29 CFR 1910.134(e)(1) as described in Citation 1, Item 1d, issued on June 25, 2004?
  - (ii) Whether the characterization of the violation as “Serious” is appropriate? If not, what is the appropriate characterization?
- e. Citation 1, Item 1e - HAR §12-202-1(e)
- (i) Whether Respondent violated HAR §12-202-1(e) as described in Citation 1, Item 1e, issued on June 25, 2004?
  - (ii) Whether the characterization of the violation as “Serious” is appropriate? If not, what is the appropriate characterization?
- f. Citation 1, Item 2 - 29 CFR 1910.178(1)(ii)
- (i) Whether Respondent violated 29 CFR 1910.178(1)(ii) as described in Citation 1, Item 2, issued on June 25, 2004?
  - (ii) Whether the characterization of the violation as “Serious” is appropriate? If not, what is the appropriate characterization?
  - (iii) Whether the imposition and amount of the \$2,250.00 penalty is appropriate? If not, what is the appropriate penalty?
- g. Citation 1, Item 3 - 29 CFR 1910.178(p)(1)
- (i) Whether Respondent violated 29 CFR 1910.178(p)(1) as described in Citation 1, Item 3, issued on June 25, 2004?
  - (ii) Whether the characterization of the violation as “Serious” is appropriate? If not, what is the appropriate characterization?
  - (iii) Whether the imposition and amount of the \$4,500.00 penalty is appropriate? If not, what is the appropriate penalty?

- h. Citation 1, Item 4 - 29 CFR 1910.305(b)(2)
  - (i) Whether Respondent violated 29 CFR 1910.305(b)(2) as described in Citation 1, Item 4, issued on June 25, 2004?
  - (ii) Whether the characterization of the violation as “Serious” is appropriate? If not, what is the appropriate characterization?
  - (iii) Whether the imposition and amount of the \$1,875.00 penalty is appropriate? If not, what is the appropriate penalty?
- i. Citation 1, Item 5 - 29 CFR 1926.404(f)(6)
  - (i) Whether Respondent violated 29 CFR 1926.404(f)(6) as described in Citation 1, Item 5, issued on June 25, 2004?
  - (ii) Whether the characterization of the violation as “Serious” is appropriate? If not, what is the appropriate characterization?
  - (iii) Whether the imposition and amount of the \$1,875.00 penalty is appropriate? If not, what is the appropriate penalty?
- j. Citation 1, Item 6 - 29 CFR 1926.405(b)(2)
  - (i) Whether Respondent violated 29 CFR 1926.405(b)(2) as described in Citation 1, Item 6, issued on June 25, 2004?
  - (ii) Whether the characterization of the violation as “Serious” is appropriate? If not, what is the appropriate characterization?
  - (iii) Whether the imposition and amount of the \$1,875.00 penalty is appropriate? If not, what is the appropriate penalty?
- k. Citation 2, Item 1 - 29 CFR 1926.405(g)(1)(iii)
  - (i) Whether Respondent violated 29 CFR 1926.405(g)(1)(iii) as described in Citation 2, Item 1, issued on June 25, 2004?
  - (ii) Whether the characterization of the violation as “Other” is appropriate? If not, what is the appropriate characterization?
- l. Citation 2, Item 2 - 29 CFR 1926.405(g)(2)(iv)
  - (i) Whether Respondent violated 29 CFR 1926.405(g)(2)(iv) as described in Citation 2, Item 2, issued on June 25, 2004?

- (ii) Whether the characterization of the violation as "Other" is appropriate? If not, what is the appropriate characterization?
- m. Whether the RCUH has enough control over the Lyon Arboretum or its employees there to qualify as a responsible party for the cited violations?
2. Discovery and other deadlines are:
- Deadline for motions; and live witness identification, including experts, and exchange of experts' reports November 8, 2004
- Director's response to motions due: November 22, 2004
- Discovery cut-off December 1, 2004
3. The hearing on any dispositive motion is scheduled on November 30, 2004 at 9:30 a.m. in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.
4. Trial is scheduled on December 9 -10, at 9:30 a.m. in the above-mentioned hearing room.
5. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, October 13, 2004.

HAWAII LABOR RELATIONS BOARD



BRIAN K. NAKAMURA, Chair



CHESTER C. KUNITAKE, Member



KATHLEEN RACUYA-MARKRICH, Member

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS v. RESEARCH  
CORPORATION OF THE UNIVERSITY OF HAWAII  
CASE NO. OSH 2004-8  
ORDER NO. 111  
PRETRIAL ORDER

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees at least five working days prior to the trial date.

Copies sent to:

Herbert B.K. Lau, Deputy Attorney General  
James E. Halvorson, Deputy Attorney General